



# High Court Amendment (Appeals and Other Matters) Rules 2017

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We, Justices of the High Court of Australia, make the following Rules of Court.

Dated 9 October 2017

S. M. Kiefel

V. M. Bell

S. J. Gageler

P. A. Keane

G. A. A. Nettle

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Justices of the High Court of Australia

A. M. Phelan  
Chief Executive and  
Principal Registrar

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## 1 Name

These Rules are the *High Court Amendment (Appeals and Other Matters) Rules 2017*.

## 2 Commencement

- (1) Each provision of these Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of these Rules	1 January 2018.	1 January 2018

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

- (2) Any information in column 3 of the table is not part of these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

## 3 Authority

These Rules are made under the following:

- (a) the *Judiciary Act 1903*;
- (b) the *Commonwealth Electoral Act 1918*;
- (c) the *Nauru (High Court Appeals) Act 1976*;
- (d) the *High Court of Australia Act 1979*.

## 4 Schedules

Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Main amendments

#### *High Court Rules 2004*

##### **1 Rule 1.06**

Insert:

***Practice Direction*** means a Practice Direction made by the Justices of the Court or a majority of the Justices of the Court.

##### **2 Rule 1.07.1**

Repeal the rule, substitute:

1.07.1 A document to be filed in the Court in a proceeding must be filed in an office of the Registry.

##### **3 Rule 4.05.1**

Repeal the rule, substitute:

4.05.1 The office hours of the Registry are as provided in a Practice Direction.

##### **4 Rule 4.05.3**

Repeal the rule.

##### **5 Subparagraphs 5.02.1(b)(i), (ii) and (iii)**

Repeal the subparagraphs, substitute:

- (i) if the matter arises in the notice of appeal or in the argument to be advanced in support of the notice of appeal—within 14 days after the grant of leave or special leave to appeal; or
- (ii) if the matter arises in the application for leave or special leave to appeal or in the argument to be advanced in support of the application—within 14 days after the application is referred to an enlarged Court; or
- (iii) if the matter arises in a notice of cross-appeal or a notice of contention or in the argument to be advanced in support of the notice—within 7 days after the notice is filed; or

##### **6 Subparagraphs 5.02.2(b)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) if the matter arises in a pleading or in the argument to be advanced in support of the pleading—within 7 days after the pleading is delivered; or
- (ii) if the matter arises in an originating process or in the argument to be advanced in support of the originating process—within 7 days after the originating process is filed; or

##### **7 Rule 6.03**

After “but”, insert “, subject to rule 13.04.”.

**8 At the end of paragraphs 9.04.1(a) and (b)**

Add “or”.

**9 At the end of rule 9.04.1**

Add:

; or (e) sending it to the person’s email address if the email address has been provided as part of the person’s address for service.

**10 Rule 13.04**

After “orders”, insert “and may publish reasons for a decision”.

**11 Part 40 of Chapter 4 (heading)**

Repeal the heading, substitute:

**Part 40—Interpretation and application of Chapter 4**

**12 Rule 40.01 (definition of *certificate to appeal*)**

Repeal the definition.

**13 Rule 40.01**

Insert:

*intervener* includes a person intervening and a person seeking leave to intervene or to be heard as *amicus curiae* before the Full Court.

**14 Rule 41.07.4**

Repeal the rule, substitute:

41.07.4 The application book must be prepared in the same manner and form as is required for a core appeal book by rules 42.13.3 to 42.13.9.

**15 Rules 41.07.7 and 41.07.8**

Repeal the rules.

**16 After rule 42.08**

Insert:

**42.08A Application for leave to intervene or to be heard as *amicus curiae***

An application for leave to intervene or to be heard as *amicus curiae* must be made by filing and serving written submissions in accordance with rule 44.04.

**17 Rule 42.10.1**

Omit “The appellant”, substitute “Unless a Justice or the Registrar otherwise orders, the appellant”.

**18 Paragraph 42.10.1(b)**

Repeal the paragraph, substitute:

- (b) a list of all exhibits tendered before the primary judge and the court below together with those exhibits.

## **19 Rules 42.11 and 42.12**

Repeal the rules.

## **20 Rule 42.13**

Repeal the rule, substitute:

### **42.13 Preparation and filing of core appeal books**

- 42.13.1 Unless a Justice or the Registrar otherwise orders or directs, the core appeal book must be prepared by the appellant in accordance with this rule.
- 42.13.2 The contents of the core appeal book must be arranged in the following order:
- (a) in a civil case—documents in the primary court or tribunal, arranged in the following order:
    - (i) if a decision of a tribunal is the subject of review—the decision and any reasons for the decision;
    - (ii) reasons of the primary court;
    - (iii) sealed order or judgment of the primary court;
  - (b) in a criminal case—documents in the primary court, arranged in the following order:
    - (i) indictment;
    - (ii) transcript of entry of plea of guilty, or summing up or charge;
    - (iii) transcript of entry of verdict;
    - (iv) Judge’s remarks on sentencing;
  - (c) documents in the court below, arranged in the following order:
    - (i) notice of appeal or application for leave to appeal;
    - (ii) reasons;
    - (iii) sealed order or judgment;
    - (iv) the index to the appeal book or documents before the court below;
  - (d) documents in this Court, arranged in the following order:
    - (i) the order granting leave or special leave to appeal or referring the application to an enlarged Court;
    - (ii) the notice of appeal;
    - (iii) any notice of cross-appeal filed in accordance with rule 42.08;
    - (iv) any submitting appearance filed by a respondent;
  - (e) any other document directed by the Registrar to be included in the core appeal book.
- 42.13.3 The core appeal book must be printed or reproduced by a process that gives uniform copies of pages in a clear and legible type.
- 42.13.4 The pages of the core appeal book must be numbered consecutively and printed on both sides of the sheet.
- 42.13.5 The pages of the core appeal book must be international size A4 and must be bound in separate volumes of not more than 500 pages (that is 250 sheets).
- 42.13.6 Each volume of the core appeal book must include:



- (a) a title page setting out the following:
    - (i) the full and correct title of the proceedings, including the title of the court below;
    - (ii) the volume number;
    - (iii) the names of the solicitors for each party;
    - (iv) the address for service of each party;
    - (v) the telephone number of each party;
    - (vi) the fax number or email address of each party;
    - (vii) the reference number (if any) of each party; and
  - (b) after the title page, an index consisting of a complete list of documents included in the core appeal book stating:
    - (i) the page of the book on which each document starts; and
    - (ii) if there are 2 or more volumes, subheadings marking the appropriate volume numbers.
- 42.13.7 The contents of the core appeal book must be printed with a 2.5 cm margin on each side of each page and every tenth line numbered in the left margin.
- 42.13.8 The core appeal book must be bound by means of plastic comb binding.
- 42.13.9 The core appeal book must be prepared and produced in a manner satisfactory to the Registrar.
- 42.13.10 Unless a Justice or the Registrar otherwise orders or directs, the appellant must, within 21 days after filing the notice of appeal:
  - (a) file 10 hard copies and an electronic copy of the core appeal book; and
  - (b) serve 3 hard copies and an electronic copy of the core appeal book on each respondent who has filed a notice of appearance.

## **21 Rule 44.01.2 (definition of *intervener*)**

Repeal the definition.

## **22 Rule 44.02 (heading)**

Repeal the heading, substitute:

### **44.02 Written submissions and further material—appellant**

## **23 Rule 44.02.1**

Omit “35 days”, substitute “49 days”.

## **24 At the end of rule 44.02**

Add:

- 44.02.4 If the appellant refers in its written submissions to any material before the lower court or the primary Judge or tribunal (including oral and documentary evidence) that is not reproduced in the core appeal book that counsel intends to refer to in oral submissions, the appellant must:
  - (a) file, with its written submissions, 10 hard copies and an electronic copy of an indexed book of the further material; and

- (b) serve, with its written submissions, one hard copy and an electronic copy of the indexed book of the further material on the respondent and any intervener.

## **25 Rule 44.03 (heading)**

Repeal the heading, substitute:

### **44.03 Written submissions and further material—respondent**

## **26 Rule 44.03.1**

Omit “21 days”, substitute “28 days”.

## **27 At the end of rule 44.03**

Add:

- 44.03.4 If the respondent refers in its written submissions to any material before the lower court or the primary Judge or tribunal (including oral and documentary evidence) that is not reproduced in the core appeal book or in the appellant’s book of further material that counsel intends to refer to in oral submissions, the respondent must:
- (a) file, with its written submissions, 10 hard copies and an electronic copy of an indexed book of the respondent’s further material; and
  - (b) serve, with its written submissions, one hard copy and an electronic copy of the indexed book of the respondent’s further material on the appellant and any intervener.

## **28 Rules 44.04.2 and 44.04.3**

Omit “7 days”, substitute “14 days”.

## **29 Rule 44.05.2**

Omit “14 days”, substitute “21 days”.

## **30 Rule 44.06**

Repeal the rule, substitute:

### **44.06 Form of written submissions**

A written submission must:

- (a) be typed in 12 point Times New Roman with line spacing of 1.5 lines; and
- (b) include footnotes typed in at least 10 point Times New Roman; and
- (c) include annotations to the documents reproduced in the core appeal book and any books of further material filed by the parties; and
- (d) be signed by:
  - (i) the senior legal practitioner who is to present the case in Court; or
  - (ii) if a party is unrepresented—the party; and
- (e) include the name, telephone number and fax number or email address of the signatory and the date of filing.

## **31 Rule 44.07.1**

Omit “, including the annotated form of a written submission,”.

## Part 2—Amendments relating to Forms

### *High Court Rules 2004*

#### **32 Schedule 1 (Form 23)**

Repeal the form, substitute:

### **Form 23—Application for leave or special leave to appeal**

(rule 41.01.1)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Applicant  
and  
CD  
Respondent

#### **APPLICATION FOR [LEAVE OR] SPECIAL LEAVE TO APPEAL**

The applicant applies for [leave or] special leave to appeal from [*state part or whole*] of the judgment of [*state Court, Justice or Judge below*] given on [*state date*].

[*If applicable, include the following statement [The applicant seeks an order that compliance with the time limited by rule 41.02.1 be dispensed with.]*]

Part I: [*The proposed grounds of appeal and the orders that will be sought if leave or special leave is granted.*]

Part II: [*A concise statement of the leave or special leave questions said to arise.*]

Part III: [*A brief statement of the applicant's argument in support of the grant of leave or special leave.*]

Part IV: [*Any reasons why an order for costs should not be made in favour of the respondent in the event that the application is refused.*]

Part V: [*A list of the authorities on which the applicant relies, identifying the paragraphs at which the relevant passages appear.*]

Part VI: [*The particular constitutional provisions, statutes and statutory instruments applicable to the questions the subject of the application set out verbatim. If more than one page in length, this Part should be attached as an annexure.*]

Dated: [e.g., 6 October 2003]

.....(signed).....  
(Applicant or the legal practitioner representing  
the Applicant)

To: The Respondent [address]

**TAKE NOTICE:** Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the applicant.

THE APPLICANT IS REPRESENTED BY:  
[name of firm and address for service, telephone and facsimile numbers, and email address ]

OR

THE APPLICANT'S ADDRESS FOR SERVICE IS:  
[if the applicant is unrepresented—address for service, telephone and facsimile numbers, and email address]

### **33 Schedule 1 (Form 27A)**

Repeal the form, substitute:

## **Form 27A—Appellant's submissions**

(rule 44.02.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Appellant  
and  
CD  
Respondent

### **APPELLANT'S SUBMISSIONS**

**Part I:** [Certification that the submission or the redacted version of the submission (as the case requires) is in a form suitable for publication on the Internet.]

**Part II:** [A concise statement of the issue or issues the appellant contends that the appeal presents.]

**Part III:** [Certification that the appellant has considered whether any notice should be given in compliance with section 78B of the Judiciary Act 1903.]

**Part IV:** [A citation of the authorised report of the reasons for judgment of both the primary and the intermediate court in the case (or, if there is no authorised report of a decision, the citation of any other report of that decision, and in the absence of any report, the Internet citation).]

**Part V:** [A narrative statement of the relevant facts found or admitted in the court from which the proceedings are brought with appropriate reference to the appeal book for the annotated version.]

**Part VI:** [A succinct argument addressing the following points:  
(a) the error or errors complained of in the court from which the proceedings are brought;  
(b) the applicable legislation, principle or rule of law relied upon, with references to authority or legislation signifying their relevance to the appellant’s argument;  
(c) where relevant, an analysis of the rationale of the legislation, principle or rule;  
(d) how the legislation, principle or rule applies to the facts or other relevant material in the case.]

**Part VII:** [Set out the **precise** form of orders sought by the appellant.]

**Part VIII:** [An estimate of the number of hours required for the presentation of the appellant’s oral argument.]

Dated: [e.g., 6 October 2003]

.....(signed).....  
[Senior legal practitioner  
presenting the case in Court,  
or appellant if unrepresented]

Name:  
Telephone:  
Facsimile:  
Email:

### **34 Schedule 1 (Form 27C)**

Repeal the form, substitute:

## **Form 27C—Intervener’s submissions**

(rule 44.04.4)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Appellant  
and

CD

Respondent

**INTERVENER'S SUBMISSIONS**

- Part I:** [Certification that the submission or the redacted version of the submission (as the case requires) is in a form suitable for publication on the Internet.]
- Part II:** [A statement of the asserted basis of intervention and the party or parties in support of whom the intervention is, or is sought to be, made.]
- Part III:** [Where necessary, why leave to intervene or to be heard as amicus curiae should be granted.]
- Part IV:** [A statement addressing so many of the issues presented by the appeal as the intervener desires to make the subject of submissions to the Court.]
- Part V:** [An estimate of the number of hours required for the presentation of the intervener's oral argument.]

Dated: [e.g., 6 October 2003]

.....(signed).....  
[Senior legal practitioner  
presenting the case in Court]

Name:  
Telephone:  
Facsimile:  
Email:

**35 Schedule 1 (Form 27D)**

Repeal the form, substitute:

**Form 27D—Respondent's submissions**

(rule 44.03.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB Appellant  
and  
CD Respondent

**RESPONDENT'S SUBMISSIONS**

- Part I:** [Certification that the submission or the redacted version of the submission (as the case requires) is in a form suitable for publication on the Internet.]
- Part II:** [A concise statement of the issue or issues the respondent contends that the appeal presents.]
- Part III:** [Certification that the respondent has considered whether any notice should be given in compliance with section 78B of the Judiciary Act 1903.]
- Part IV:** [A statement of any material facts set out in the appellant's narrative of facts or chronology that are contested with appropriate reference to the appeal book for the annotated version.]
- Part V:** [A statement of argument in answer to the argument of the appellant and any intervener supporting the appellant.]
- Part VI:** [Where applicable, a statement of the respondent's argument on the respondent's notice of contention or notice of cross-appeal.]
- Part VII:** [An estimate of the number of hours required for the presentation of the respondent's oral argument.]

Dated: [e.g., 6 October 2003]

.....(signed).....  
[Senior legal practitioner  
presenting the case in Court,  
or respondent if unrepresented]

Name:  
Telephone:  
Facsimile:  
Email:

## **Part 3—Transitional provisions**

### *High Court Rules 2004*

#### **36 In the appropriate position in Chapter 6**

Insert:

## **Part 60—Transitional provisions relating to the High Court Amendment (Appeals and Other Matters) Rules 2017**

### **60.01 Amendments relating to appeals etc.**

The amendments made by items 5, 6 and 13 to 31 of Schedule 1 to the *High Court Amendment (Appeals and Other Matters) Rules 2017* apply in relation to a proceeding that commences on or after 1 January 2018.

### **60.02 Forms**

The amendments made by items 32 to 35 of Schedule 1 to the *High Court Amendment (Appeals and Other Matters) Rules 2017* apply in relation to a document that is to be filed in a proceeding on or after 1 January 2018 (whether the proceeding was commenced before, or commences after, that date).

### **60.03 Repeal of this Part**

This Part is repealed at the start of 1 January 2019.